

Title 18. Public Revenue
Sales and Use Tax Regulation 1802
Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Tax

FINAL STATEMENT OF REASONS
Overview/Non-Controlling Summary

Update

Regulation 1802 interprets and makes specific the place-of-sale rules established by Revenue and Taxation Code Section 7202. It defines where sales are deemed to take place for the purpose of allocating local sales tax revenues to the jurisdictions participating in the Local Tax System (“participating jurisdictions”).

Specific Purpose

The purpose of the proposed amendment is to interpret, implement, and make specific the place-of-sale rules contained in Revenue and Taxation Code section 7202. This amendment is necessary to provide guidance to the taxpayers that engage in such transactions.

Factual Basis

Regulation 1802 discusses how revenue derived from sales and use taxes levied by the cities under the Bradley-Burns Uniform Local Sales and Use Tax (“Local Tax”) Law are allocated either to where the retailer exercises its privilege of selling (sales tax), or where the purchaser uses, stores, or otherwise consumes the property purchased (use tax). In part, it discusses the allocation of local sales tax revenues when the retailer makes sales at locations other than its principal place of business.

New subdivision (c), TRANSACTIONS NEGOTIATED OUT OF STATE AND DELIVERED FROM THE RETAILER’S STOCK OF TANGIBLE PERSONAL PROPERTY IN CALIFORNIA, added; current subdivision (c) re-designated (d) accordingly. Subdivision (b)(5) is deleted; subdivisions (b)(6) and (7) re-designated (5) and (6) accordingly. Current language of former subdivision (b)(5) concerning the place of sale for out-of-state retailers that do not have a permanent place of business in California added as new subdivision (c)(1) with the operative date of October 1, 1993, deleted as no longer necessary. New subdivision (c)(2) added to provide for direct distribution of local sales tax revenues, specifically for sales negotiated out of state, to the location of the stock of goods that fulfills the order when the retailer has sales offices in the state and where there is no participation by the retailer’s in state sales office.

Local Mandate Determination

The Board of Equalization has determined that the amended regulation does not impose a mandate on local agencies or school districts.

Response to Public Comment

The Board scheduled public hearings for Regulations 1699 and 1802 on November 15, 2005. Due to the events described below, the public hearing for both regulations was continued to December 13, 2005.

The original language of Regulation 1699 that the Board had considered for publication had contained an operative date for the new language. Subsequent to publication, the Board concluded that the deletion of the operative date to effect the purpose described above caused an apparent conflict between the existing language and the proposed new language, in that the new language appeared to simply contradict the existing language, thus rendering the regulation internally inconsistent.

In a Chief Counsel Memo dated November 7, 2005, staff presented a proposed change to the published language of Regulation 1699 that addressed the potential inconsistency between the existing and published language, and also entirely reworded the published language in an effort to provide more clarity to affected persons. No changes to the published language of Regulation 1802 were presented by staff. The staff presented its alternative language at the public hearing on November 15, 2005.

Prior to the public hearing scheduled for November 15, 2005, the Board received the following public comments:

(1) Letter dated October 3, 2005, from the Honorable Jill Hardy, Mayor, City of Huntington Beach, opposing the adoption of the changes to Regulation 1802 and urging, should the changes be adopted, that they apply on a prospective basis only.

(2) Six virtually identical letters from the correspondents listed below, supporting the Board's adoption of the language approved for publication on August 31, 2005; urging the Board to make clear that the amendments were declaratory of existing law; and requesting that any proposed additional amendments to Regulation 1699 be minimal so as to avoid unintended consequences. Letters dated November 9, 2005 were received from Larry Cheeves, City Manager, City of Union City; Grant D. Yee, Administrative Services/Finance Director, City of Ontario; Ronald H. Villa, Financial Management Director, City of San Diego; Daniel J. Wall, Chief Legislative Advocate, County of Los Angeles; and Barbara Kilroy, City Manager, City of Compton. A letter dated November 10, 2005 was received from Terry Schutten, County Executive, County of Sacramento.

(3) Letter dated November 10, 2005, from Perry H. Carter, Acting Assistant City Manager, City of Hayward, expressed support for the August 31, 2005 published versions of

Regulations 1802 and 1699, stating that no modifications were needed as the proposed language was clear, and also urged the Board to make clear that the amendments were declaratory of existing law.

(4) Letter dated November 14, 2005, from Albin C. Koch, General Tax Counsel, MBIA MuniServices Company and Robert Cendejas, Attorney at Law, a) supporting the August 31, 2005 published version of Regulation 1802; b) suggesting that the word “therefore” be inserted at the beginning of the new proposed language of Regulation 1699; c) making clear that these changes are clarifying of existing law, and d) adding section 6226 of the Revenue and Taxation Code to the “References” section of Regulation 1699. The letter also urged rejection of the staff’s proposed alternative language.

At the November 15, 2005 public hearing, the following public comment was received:

Fran Mancia (representing MBIA and “our local government clients”), Stephen Conway (Director of Finance, Town of Los Gatos), Jean Korinke (League of California Cities) and Veronica Larsen (Revenue Manager, City of Hayward) urged adoption of the language of Regulations 1699 and 1802 as published on August 31, 3005.

Mark Moses (Director of Administrative Services, City of Stockton) supported adoption of the language of Regulation 1802 as published on August 31, 2005 as it received “due consideration” and was talked over by the interested parties.

Al Koch (MBIA Tax Counsel) expressed concern that the staff’s proposed alternative language for Regulation 1699 could unintentionally affect the permitting of warehouse locations of resellers who did not fulfill retail sales at those locations.

On its own motion, the Board deferred the public hearing on both regulations to December 13, 2005, to allow interested parties and the public to consider the staff’s proposed alternative language to Regulation 1699.

During the continuance period, interested parties Albin Koch, Fran Mancia, and Robert Cendejas (MBIA/Cendejas) collectively provided several comments on the staff’s proposed alternative language to Regulation 1699 and met with staff on November 22, 2005, regarding their concerns stated at the November 15, 2005 hearing and in their public comment.

The requests regarding Regulation 1699 were to:

- 1) include section 6226 of the Revenue and Taxation Code in the statutory “References;”
- 2) make changes to provide a clearer grammatical distinction between the existing and published language; and
- 3) make a previously-undiscussed change in the first example of subdivision (a) to reflect staff’s existing administrative practice in determining when permits are issued to sales offices.

A request regarding Regulation 1802 was to add the modifier “more significant” just before the word “participation” in the published language of subdivision (c)(2).

At the November 22 meeting, staff opposed the inclusion of section 6226 in the “References” section of Regulation 1699 and the addition of “more significant” before the word “participation” in new subdivision (c)(2) of Regulation 1802 as legally inaccurate; MBIA/Cendejas subsequently withdrew the requests.

After the November 22 meeting, several versions of both the published language and the staff alternative language of Regulation 1699 were exchanged, but agreement between staff and MBIA/Cendejas was not reached, so staff summarized the staff and MBIA/Cendejas proposals as alternatives in a Chief Counsel memorandum dated November 30, 2005. Further exchanges between staff and MBIA/Cendejas, including a meeting on December 5, 2005, resulted in agreement between staff and MBIA/Cendejas on three recommended changes to subdivision (a) that were set forth in a Chief Counsel memorandum dated December 6, 2005, and presented to the Board for consideration at the December 13, 2005 public hearing.

At the December 13, 2005 public hearing, staff presented to the Board the three agreed-upon changes to the published language of Regulation 1699.

The first change, originally requested by MBIA/Cendejas at the November 22, 2005 meeting with staff, was proposed to conform the language of the first example of subdivision (a) of Regulation 1699 to existing administrative practice by changing the word “and” to “or.”

The second change to the published language added to subdivision (a) of Regulation 1699 was proposed to remedy the potential lack of consistency between the existing language and the new published language by deleting the paragraph spacing after the existing second paragraph of subdivision (a) and adding the word “However” to the beginning of the published language.

The third change addressed the concerns of MBIA/Cendejas that the published language could inadvertently affect the permit requirements of non-retailer warehouse locations by deleting the phrase “and which customers do not customarily visit for the purpose of making purchases” in the published language.

Fran Mancina (MBIA MuniServices Company and “a number of our local governmental clients” expressed full support for the staff-recommended changes to Regulation 1699 and the version of Regulation 1802 published on August 31, 2005.

Robert Cendejas (representing the Cities of Fremont, Long Beach, Signal Hill, and the Town of Los Gatos) expressed agreement with the staff-recommended changes to Regulation 1699.

The Board adopted the staff-recommended changes to Regulation 1699 and the version of Regulation 1802 published on August 31, 2005.

The Board accepted the staff's recommended changes to Regulation 1699 (as agreed to by Messrs. Koch, Mancina, and Cendejas) to provide clarity in setting forth the requirements for various types of warehouse operations. In doing so, the Board accepted the comments of Larry Cheeves, City Manager, City of Union City; Grant D. Yee, Administrative Services/Finance Director, City of Ontario; Ronald H. Villa, Financial Management Director, City of San Diego; Daniel J. Wall, Chief Legislative Advocate, County of Los Angeles; Barbara Kilroy, City Manager, City of Compton; and Terry Schutten, County Executive, County of Sacramento that the changes to Regulation 1699 minimize unintended consequences to owners of stocks of goods in this state.

In adopting the published language of Regulation 1802, the Board rejected the requests of the Honorable Jill Hardy to make no changes to Regulation 1802 or, if changes were made, to make the changes prospective only. The reasons underlying the Board's determination that the changes were not prospective in application are given in the "Updated Informative Digest."

At the continued Public Hearing on December 13, 2005, the Board adopted the staff-recommended changes to Regulation 1699 and the published version of Regulation 1802.

Small Business Impact

The Board of Equalization has determined that the amended regulation will not have a significant adverse economic impact on small businesses.

Adverse Economic Impact on Private Persons/Businesses Not Including Small Business

No impact.

Federal Regulations

Regulation 1802 and the proposed change have no comparable federal regulations.

Alternatives Considered

By its motion, the Board determined no alternative to amending the regulation would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.